

CALIFORNIA COASTAL COMMISSION

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**W7a**

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STAFF REPORT: AMENDMENT**Coastal Development****Permit Number.....A-3-MCO-02-058-A****Applicant.....Murray & Carol Smith****Project Location3105 Seventeen Mile Drive, Pebble Beach (APN 008-012-007)**

Amendment Description Amendment to increase site coverage from 14.6% of the 42,121 square foot site to 21.2%, reduce the restored dune area from 85.4% of the site to 62%, place 16.8% of the site in a “no turf” zone and allow a maximum of 50% open fencing rather than 75% open.

File documents.....County coastal permit file PLN000239; Monterey County Board of Supervisors Resolution # 02-212; Monterey County Local Coastal Program, including *Del Monte Forest Land Use Plan* and *Monterey County Coastal Implementation Plan*, Coastal Development Permit A-3-MCO-02-058, Settlement Agreement date stamped May 05, 2004.

Staff recommendation ...Approval with Conditions**Summary of Staff Recommendation**

The project is located in the Del Monte Forest planning area of Monterey County (project vicinity map is shown in Exhibit A). On September 10, 2003, Commission approved a Coastal Development Permit for the demolition of an existing home and the construction of a partial two story single family on a 42,121 square foot site located at 3105 Seventeen Mile Drive in Pebble Beach. The permit included a number of conditions to limit impacts on dune habitat, visual resources and potential archaeological resources. On November 3, 2003, the Applicant filed suit against the Commission alleging that the Commission lacked jurisdiction to consider the project, that the September 2003 permit decision was not supported by substantial evidence, that it was not in accordance with law and that it violated the Applicants’ constitutional rights, including their right to equal protection of the laws. In response to the suit, the Commission authorized pursuit of a Settlement Agreement to avoid continued litigation of this item (Please see “Settlement Agreement” date stamped May 5, 2004, Exhibit B)



California Coastal Commission
June 9, 2004 Meeting in San Pedro

Staff: D. Landry Approved by:
 CCC Meeting Packet A-3-MCO-02-058-A Smith SFD

The Applicant is now seeking an amendment, consistent with the terms of the “Settlement Agreement” to CDP A-3-MCO-058 to increase site coverage and limit restoration of the dune habitat. The proposed amendment will change some of the terms of the current CDP. Specifically, the September approval was conditioned to limit the new site coverage to that of the existing dwelling (14.6%) and to require the remainder of the site to be restored to native dune habitat and deed restricted to assure the continued preservation of the restored area. The Applicant proposes a maximum site coverage (house and driveway, courtyard, terraces) of 21.2 % (8,929 square feet), a reduction in restored area from 85.4% (35,971 square feet) to 62% (26,115 square feet) and the designation of the remainder of the site as a “no turf” area. The amendment also specifically provides for front yard fencing only, with a design that is 50% open, as compared to the previous authorization for fencing with a 75% open design. All other conditions of the permit remain unchanged.

Staff recommends that the Commission approve the proposed amendment as consistent with the ESHA policies of the Del Monte Forest LCP.

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Staff Recommendation on Amendment 3-MCO-02-058-A

The staff recommends that the Commission approve Amendment 3-MCO-02-058A as conditioned .

MOTION: Staff recommends a **YES** vote on the following motion:

“I move that the Commission approve the proposed amendment 3-MCO-02-058A pursuant to the staff recommendation.”

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the proposed amendment as conditioned, and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves Amendment 3-MCO-02-058A and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Del Monte Forest LCP, which is a segment of the Monterey County LCP, and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.



4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. Revised Final Site Plans. Prior to issuance of the coastal development permit, the Permittee shall submit two sets of final site plans for the Executive Director's review and approval, which are substantially similar to the "Settlement Proposal Site Plan" attached hereto as attachment 1 and which demonstrate the following:

- (a) The aggregate lot coverage, including buildings, patios, driveways and all other paved surfaces, does not exceed 21.2% of the lot as depicted in "Area E" of the attached "Settlement Proposal Site Plan."
- (b) The design, size, height, and first floor finished elevation of the new house shall be substantially similar to the plan set attached to the Settlement Proposal Site Plan.
- (c) Deed-restricted habitat area and habitat restoration areas comprising 62% of the lot as depicted in "Area D" of the attached "Settlement Proposal Site Plan."
- (d) Fencing on the front of the lot facing Seventeen Mile Drive only. Fencing shall not exceed six feet in height and shall be a minimum of 50% open design. All existing grape stake fencing shall be removed.
- (e) A "no turf zone" comprising 16.8% of the lot as depicted in "Area F" of the attached "Settlement Proposal Site Plan." The area designated as the "no turf zone" shall not be paved in any way and shall contain no structures. No plants planted in the "no turf zone" shall be non-native invasive species.

2. Dune Habitat Restoration Landscaping Plan. Prior to issuance of the coastal development permit, the Permittee shall submit for the Executive Director's review and approval, two sets of dune habitat restoration landscape plans, prepared by a qualified expert, for the deed restricted habitat area and habitat restoration area depicted as "Area D" on the attached "Settlement Proposal Site Plan." The restoration plan shall be prepared using California native dune plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific conditions of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. At a minimum, the plan shall provide that:

- (a) With the exception of existing trees, all vegetation planted on the site will consist of native dune plants.



(b) All required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant material to ensure continued compliance with the landscape plan.

The plans shall include, at a minimum, the following components:

(a) A map showing the type, size and location of all plant materials that will be used, the irrigation system, if any, the topography of the site, and all other landscape features.

(b) A schedule for installation of plants.

(c) A schedule for monitoring the health of the dune habitat in the restored area.

(d) A maintenance plan for the restored habitat.

(e) A plan for any proposed fencing on the west front of the lot facing 17 Mile Drive, with the fencing to be a minimum of 50% open to allow free passage of sand, seeds and wildlife.

(f) Measures to prevent disturbance of native groundcover and wildlife.

Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved restoration plans and describing long-term maintenance requirements for the restoration. At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently, to identify and correct any restoration and maintenance issues.

Three years from the date of completion of the construction of the new residence, the permittee or successors in interest shall submit, for review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified specialist, that certifies the on-site restoration is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.

If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Dune Habitat Restoration Landscaping Plan approved pursuant to this permit, the Permittee or successors in interest shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.



3. Open Space Restriction. No development as defined in section 30106 of the Coastal Act shall occur in the area depicted as "Area D" on the attached "Settlement Proposal Site Plan" and as described and depicted in a site plan to be attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for (1) necessary utility lines to serve the residence, (2) fencing on the west front of the lot as provided for in these Special Conditions, and (3) habitat restoration, maintenance, and monitoring activities pursuant to the Dune Habitat Restoration Landscaping Plan required by Special Condition 2 of this permit.

Prior to issuance of the NOI by the Executive Director, the applicant shall submit for the review and approval of the Executive Director a formal legal description and graphic description of the portion of the subject property affected by this condition which description shall include all property depicted as "Area D" on the attached "Settlement Proposal Site Plan." Upon approval by the Executive Director of the formal legal description and graphic description of the portion of the subject property affected by this condition, that description shall be attached as an exhibit to the NOI.

4. Fencing. Prior to commencement of construction, the permittee shall satisfy the following requirements: Permanent fencing shall be limited to the west front of the property facing 17 Mile Drive and shall be designed to be at a minimum 50% open to allow free passage of sand, seeds and wildlife. Any changes in fence design or placement will require the Executive Director's review and approval and may require an amendment to this permit. No permanent fencing other than that shown on approved final plans, as required by Special Condition 2, is authorized by this permit without Executive Director approval. All existing fencing shall be removed.

5. No Turf Zone. All portions of the site depicted as "Area F" on the attached "Settlement Proposal Site Plan" shall be a no turf zone. There shall be no paving and no structures placed in the no turf zone. No plants planted in the no turf zone shall be non-native invasive species.

6. Archeological Mitigation. Following removal of the existing development and prior to any earth moving activities, a qualified archeologist and local Native American shall survey the site for cultural materials. In addition, the permittee shall retain a qualified archeologist, approved by the Executive Director, as well as a qualified local Native American, to monitor all earth disturbing activities. If an area of cultural deposits is discovered during the course of the project, all construction shall cease in the vicinity of the resource until a mitigation plan, prepared by a qualified professional archaeologist in consultation with local Native American groups, is completed and implemented. Prior to implementation, the mitigation plan shall be reviewed and approved by the State Historical Preservation Office and by the Executive Director of the Commission. The plan shall include measures to avoid injury to the resources to the maximum extent practicable; provide mitigation of unavoidable archaeological impacts, and shall respond to the recommendations and requests of Native Americans to the satisfaction of the Executive Director. A report verifying that the approved mitigation plan has been completed shall be submitted to the Executive Director for review and approval prior to recommencing project construction.



7. Environmental Monitoring During Construction. Permittee shall employ an environmental monitor who is approved by the Executive Director and the County of Monterey's Planning Department to ensure compliance with all mitigation requirements during the construction phase. Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction.

8. Utility Connections. All utilities and connections shall remain underground. When installing any new utility connections, care shall be taken to minimize disturbance of the deed-restricted vegetation in accordance with Special Conditions 2 and 3.

9. Incorporation of County Mitigation Requirements. All conditions of the County permit issued by the Board of Supervisors on May 28, 2002 imposed under an authority other than the Coastal Act remain in effect. Conditions 1, 2, 17, 18, 20, 21, 22, 23, 24, 25, 26, 29, 31, 32, 33 and 37 of the County permit are hereby deleted and superseded by the Special Conditions of this Permit.

10. Deed Restriction. Prior to issuance of the coastal development permit, the permittee shall submit to the Executive Director for review and approval documentation demonstrating that the permittee has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that pursuant to this permit the California Coastal Commission has authorized development on the property subject to terms and conditions that restrict the use and enjoyment of the property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall also indicate that in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification or amendment thereof remains in existence on the property.

Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The Applicant proposes an amendment, consistent with the terms of the draft "Settlement Agreement" to CDP A-3-MCO-058 to increase site coverage and limit restoration of the dune habitat. The proposed amendment will change some of the terms of the current CDP. Specifically, the September 2003 approval was conditioned to limit the new site coverage to that of the existing dwelling (14.6%) and to require the remainder of the site to be restored to native dune habitat and deed restricted to assure the continued preservation of the restored area. The Applicant proposes a maximum site coverage (house and driveway, courtyard, terraces) of 21.2 % (8,929 square feet), a reduction in restored area from 85.4% (35,971 square feet) to 62% (26,115 square feet) and the designation of the remainder of the site as a "no turf" area. The amendment also provides for front yard fencing only with a design that is 50%



open, as compared to the previous authorization for perimeter fencing with a 75% open design.

The site is located on Seventeen Mile Drive near Fanshell Beach. Surrounding land uses adjacent to the project area include single-family residential units to the north, east and south sides of 17-Mile Drive, a 20-acre dune restoration area located just to the north of the site, and open ocean to the west. The existing homes in this area consist of primarily one-story homes and some two-story homes.

The Spyglass Hill Golf Course is located slightly inland of the site, and the Cypress Point Golf Links is located roughly 2,000 feet to the south. Physically, the area is generally comprised of remnant sand dunes, which change gradually into Monterey pine forest. The area is included in the Asilomar dune system, which stretches roughly 4 miles from Point Pinos in the north to Fan Shell Beach to the south, and has the same physical characteristics including the same types of rare vegetation and animal species.

B. Issue Analysis and Conclusions

1. Environmentally Sensitive Habitat Resources

A. Local Coastal Program Provisions

As discussed in the Adopted Findings for the original approval of the CDP for this project, the site is located in the Asilomar Dunes, which is considered to be an environmentally sensitive habitat. The LCP policies relevant to the protection of the habitat are detailed in the September Findings and generally provide that habitat values must be protected.

B. Issue Analysis and Conclusion

As discussed in the September 10, 2003 Adopted Findings for this project, much of the site is reasonably healthy or degraded dune habitat. A strict reading of the ESHA protection policies in the Del Monte Forest LCP would not permit residential use in habitat, however, the Commission has found that limited residential use may be allowed while still providing feasible restoration and protection of the dune habitat. Over the course of many years, the Commission has approved a number of single family homes both in the portion of the Asilomar Dunes that is located in the adjacent City of Pacific Grove and, prior to certification of the Del Monte Forest LCP, in this area of Pebble Beach. Typically, these approvals have limited site coverage to no more than 20% and required that the remainder of the site be restored and placed in a protective easement or deed restriction. In this case the Applicant is requesting slightly more site coverage and limiting the restoration area to 62% rather than 80%. The remaining 16.8% of the site is proposed as a “no turf” area which cannot contain any paving, structural improvements or non native, invasive plants. (Special Condition #5) The proposed amendment is thus generally consistent with the Commission’s past approvals, and can be found consistent with the LCP policies and implementing ordinances designed to protect dune habitats.

The Applicant also proposes allowing a more “closed” fence design than originally approved (50% open vs. 75% open). As discussed in detail in the original Adopted Findings for this project, open fence design in dune habitat allows for the more natural dissemination of native plant seeds and also does not obstruct small native fauna. Fencing on this site is limited to the Seventeen Mile frontage only. Most of



the dune habitat area lies inland of Seventeen Mile Drive, thus it can be expected that most animal activity and seed dissemination will be focused inland of Seventeen Mile Drive as well, therefore the proposed change in fence design will have a negligible impact on the habitat. As proposed, this revision to the original approval will be consistent with the ESHA policies of the Del Monte Forest LCP.

C. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The environmental review of the proposed amendment conducted by commission staff involved the evaluation of potential impacts to relevant coastal resource issues, in this case, environmentally sensitive dune habitat. This analysis is reflected in the findings that are incorporated into this CEQA finding.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the amendment is approved subject to conditions that implement the mitigating actions required (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed amendment not have any significant adverse effects on the environment within the meaning of CEQA.

